



Cyber-Enabled Child Sexual Exploitation and Sexual Abuse:
Fighting for Children's Dignity and Safety

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A thesis submitted for the degree of
***LL.M in Transnational and European Commercial Law, Banking Law,
Arbitration/Mediation***

March 2021
Thessaloniki – Greece

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Abstract

This thesis explores the topic of the online child sexual exploitation and abuse (OCSEA) given the dramatic changes brought by information and communication technologies. It primarily examines the type of the offences criminalized under the international and European legal framework as well as the legislative and practical preventive responses for combating such egregious phenomenon. In particular, it critically analyses the agreed definitions concerning the OCSEA based on the *'Luxembourg Guidelines'*, portraying a better understanding of the relevant offences. Preventive legislative responses are thoroughly explained in combination with a comparative analysis of the UNCRC, the OPSC, the Lanzarote Convention and the Directive 2011/93/EU, mainly indicating how the said instruments complement and strengthen each other. International and European practical responses are equally analyzed, including the work of Interpol and both CoE and EU strategies serving as pivotal catalysts for the establishment of concerted efforts towards a holistic protection of the child-victim. Further, the present study underscores the need of putting an end to the perception of impunity by highlighting the importance of the retrieval of the illicit material depicting children and the identification of both the victims and the sexual predators. Similarly, it stresses that states should prioritize the implementation of the respective legal framework, providing specialized and long-term support for child-victims, by strengthening awareness policies and facilitating access to justice for children. Lastly, it points out the need of strategic private sector commitment, multi-sectoral collaboration as well as sustained education focusing on the digital rights of the child aimed at ensuring children's dignity and safety in the cyberspace.

Acknowledgements

This thesis would not have been possible without the support of many people, whom I would like to thank.

First and foremost, I would like to express my sincere gratitude to my supervisor, Professor Teresa Rodriguez de las Heras Ballell, for the insightful guidance and advice throughout the whole process.

To my friends, especially Ariadni Koutsimpou and Giorgia Ercolani for their assistance and encouragement till the very last moment.

To my friends and colleagues, Christina Voulimenea and Tereza Mimikos for their meaningful support, patience and understanding while I was working with them.

Most importantly, I would like to thank my parents and my sister, for their love, unfailing support and for always giving me the strength to attain my goals.

Cheers !

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List of Abbreviations

CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
CRC	Committee on the Rights of the Child
CSAM	Child Sexual Abuse Material
CSEM	Child Sexual Exploitation Material
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ERA	Academy of European Law
EU	European Union
ICSE	International Child Sexual Exploitation
ICTs	Information and Communication Technologies
MS	Member States of the European Union
OCSA	Online Child Sexual Abuse
OCSE	Online Child Sexual Exploitation
OCSEA	Online Child Sexual Exploitation and Abuse
OPSC	Optional Protocol on the Sale of Children
UN	United Nations
UNCRC	UN Convention on the Rights of the Child

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Introduction

1. Background Considerations

Information and Communication technologies (hereinafter ICTs) play a crucial role for the lives of children as they are being increasingly used to support their education and social development. On the other hand, through the internet children have access to an almost endless supply of information, including a variety of encyclopedias, a safe passage to online libraries and other valuable materials useful for their interaction and social growth. The latter mainly refers to the use of social media platforms, inter alia Facebook, Twitter, Instagram and the like.¹ ICTs shape the biggest part of all human activities while online and offline domains are being used interchangeably and thus it could be argued that children are part of a digital world where online and offline distinctions no longer portray autonomous social spaces.²

Cyber-facilitated interactions frame children's lives in many ways, mostly by creating a magnitude of opportunities, however an array of risks is omnipresent taken into account that their well-being and human rights are being steadily jeopardized.³ Given that many aspects of our daily life have shifted to online-enabled tools, the likelihood for children to be threaten by grave criminal acts, including *online child sexual exploitation and abuse* (hereinafter OCSEA), is a constant reality.⁴ Internet penetration allows the perpetrators to benefit from the online presence of juveniles with the view to contact, groom or abuse them. The effortless access to encrypted messaging platforms and peer to peer networks create a fertile ground for offenders to connect,

¹ American Academy of Child and Adolescent Psychiatry, Internet Use in Children, October 2015, available at: https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Children-Online-059.aspx

² ECPAT International, Summary Paper on Online Sexual Exploitation, 2020, pp. 1-2, available at: <https://www.ecpat.org/wp-content/uploads/2020/12/ECPAT-Summary-paper-on-Online-Child-Sexual-Exploitation-2020.pdf>

³ Committee of Ministers, Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment, 2018, p. 5, available at: <https://edoc.coe.int/en/children-and-the-internet/7921-guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-the-digital-environment-recommendation-cmrec20187-of-the-committee-of-ministers.html>

⁴ Council of Europe, Member State Responses to Prevent and Combat Online Child Sexual Exploitation and Abuse, 2019, p. 11, available at: <https://rm.coe.int/191120-baseline-mapping-web-version-3-/168098e109>

interact, dodge the identification and thus share *child sexual abuse and exploitation material* (hereinafter CSAM/CSEM).⁵

As reported by the International Communication Union, in Europe 80 % of the population is actively online whereas of all Internet users worldwide approximately one third are children under the age of eighteen years.⁶ In addition to the fact that schools, communities and families are espousing online tools as part of the assumed configuration of society in the digital era,⁷ the Covid-19 pandemic and related restrictive measures have had a great influence on the lives of children online and therefore have aggravated the prevailing drivers of OCSEA, providing new grounds for perpetrators.⁸ For instance, the US-based National Center for Missing and Exploited Children has reported a 106 % increase in child sexual exploitation complaints in March 2020 as compared to the same month in 2019.⁹ The latter entails an abrupt surge in the number of offenders who are allegedly attempting to contact juveniles through the online environment, an expanded amount of connections from which CSAM have been whipped out over peer to peer file sharing networks. In Denmark, an increased number of online offender activity and attempts to access websites featuring CSEM has been noticed while in Spain a fairly large proportion of complaints has been communicated by the public to the hotlines and law enforcement institutions available.¹⁰

Taken into account the above, a better understanding of the range of offenders and the exploitative nature of their actions remains relevant. In this regard, children sexual

⁵ ECPAT International (n 2) 2.

⁶ Lievens, E. et al, 'Children's Rights and Digital Technologies' in *International Human Rights of Children*, Springer, 2019, p. 488.

⁷ Ibid.

⁸ WeProtect Global Alliance, 'Impact of Covid-19 on Online Child Sexual Exploitation', 13 April 2020, p. 2, available at: <https://alliancecpha.org/en/child-protection-online-library/weprotect-global-alliance-intelligence-brief-impact-covid-19-online>

⁹ Brewster, T, 'Child Exploitation Complaints Rise 106% To Hit 2 Million in Just One Month: Is COVID-19 To Blame?', 24 April 2020, available at: <https://www.forbes.com/sites/thomasbrewster/2020/04/24/child-exploitation-complaints-rise-106-to-hit-2-million-in-just-one-month-is-covid-19-to-blame/?sh=731f45414c9c>;

¹⁰ Europol, 'Catching the Virus Cybercrime, Disinformation and the Covid-19 Pandemic', 3 April 2020, p.7, available at: <https://www.europol.europa.eu/publications-documents/catching-virus-cybercrime-disinformation-and-covid-19-pandemic>

exploitation with a link to the online environment may possibly have a twofold dimension, predominantly including illicit acts online as well as offenders who prey on the children Internet users and seek to connect with and eventually groom them.¹¹ OCSEA is prohibited by various international instruments, including the UNCRC,¹² the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (hereinafter OPSC),¹³ as well as regional instruments namely the Lanzarote Convention¹⁴ and the Directive 2011/93/EU.¹⁵ According to the respective legal provisions, OCSEA is prohibited and constitutes a grave form of violence against children. Within the framework of OCSEA, criminal acts may extend from online grooming, CSAM/CSEM to online streaming of child sexual abuse.¹⁶

In this ambiguous environment in which increasing reports of solicitation and exploitation of children online have been observed,¹⁷ it is of utmost importance to analyze the agreed definition of OCSEA and delve into the most prevalent characteristics of the crimes deriving from the cyber-facilitated offenses. Types of online sexual exploitation and abuse will be critically examined with a view to better understand the interactions between the child-victim and the perpetrator. Taking into consideration that trickery, bribes and other deceiving practices form an integral part of these contacts,¹⁸ a thorough analysis of the differential power of offenders remains relevant. Furthermore, in compliance with the international consensus that OCSEA

¹¹ EPCAT International (n 2) p. 3.

¹² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

¹³ UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 16 March 2001, A/RES/54/263.

¹⁴ Council of Europe, *Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse*, 12 July 2007, CETS No. 201.

¹⁵ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, OJ L 335, 17.12.2011, p. 1–14.

¹⁶ UNODC, The Doha Declaration – Promoting a Culture of Lawfulness, ‘Online Child Sexual Exploitation and Abuse’, May 2019 – updated February 2020, available at: <https://www.unodc.org/e4i/en/cybercrime/module-12/key-issues/online-child-sexual-exploitation-and-abuse.html>

¹⁷ Kloess, A. J, et al., ‘Online Child Sexual Exploitation: Prevalence, Process and Offender Characteristics’, *Trauma, Violence and Abuse*, April 2014, Vol. 15(2), p. 126.

¹⁸ UNODC (n 16).

constitutes an ever-growing threat to the rights of children, a legal scrutiny of the applicable protective legislation will be reviewed with the intention to adequately explain the global and regional initiatives taken in this scope.

Moreover, following the extensive analysis of the legal tools, a thorough investigation of the respective preventive measures will be explored. In this regard, this research will seek to address how the need of concerted efforts towards a holistic protection of the child-online victim prevails over just theoretical approaches which lack effective implementation. Thus, several global initiatives launched to prevent and tackle sexual-related crimes against children on cyberspace will be critically presented portraying effective mechanisms through which OCSEA might eventually come to an end.

Given that the overall volume of CSAM and CSEM seems to circulate in the digital environment in an unprecedented pace,¹⁹ law enforcement tools mandate that offenders are caught and brought to justice. Proactive methods capable of detecting the illicit material online may be used with the aim to curb and combat OCSEA. For this reason, special focus will be paid on how child-victims can substantially fulfill their right to safely access and use of the digital tools by stressing that states should relentlessly monitor the circulation of the illicit material online and require law-enforcement authorities to establish a '*database of hashes*' accelerating the identification of children subjected to online sexual exploitation or abuse and apprehend offenders.²⁰

In a nutshell, the present study aims to answer the following questions:

- Are the international and European instruments concerning OCSEA able to offer adequate protection to child-victims?
- How do the international and regional responses ensure child dignity in the cyberspace?

¹⁹ EPCAT International (n 2) 3.

²⁰ Committee of Ministers (n 3) 21.

2. Methodology

For the purposes of answering the research questions, this thesis is structured into 4 main chapters.

To begin with, chapter 1 will provide an extensive analysis of the core elements of OCSEA by critically examining the '*Luxembourg Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*'. As the latter constitutes a global initiative launched by 18 international partners in order to harmonize terms and definitions related to child protection, great emphasis should be given to the common language used to describe conduct leading to sexual exploitation and abuse which has a long-lasting effect on the rights of minors and determines international attempts to protect juveniles.²¹ The analysis serves as a guidance by providing a comprehensive insight on the international consensus towards ending the OCSEA. In addition, through the examination of the precise terminology, the study aims at explaining how the data collection, international and multi-sectoral cooperation can be strengthened and eventually build a holistic response furnishing specialized and long-term support affording children a life free from violence and abuse.

Furthermore, chapter 2 will emphasize on the respective legal provisions arising out of the international and European instruments. Increased attention will be paid to the UNCRC, the OPSC, the Lanzarote Convention and the Directive 2011/93/EU. At the international level, the OCSEA will be investigated through the lens of the UNCRC and the OPSC. The former can be viewed as the most predominant legal tool through which children's rights can be fulfilled in the digital environment in line with the core fundamental principles governing the UNCRC whereas the latter will be used as a canvas to indicate how states can guarantee their obligations by *primarily establishing*

²¹ International Labor Organisation, 'Child Sexual Abuse', press release, 14 June 2016, available at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_490738/lang-en/index.htm

*preventive measures and encourage the participation of child-victims in information, education and training programmes.*²²

At the European level, as the Lanzarote Convention lays down far-reaching benchmarks for both criminal and procedural law standards to prevent and combat the OCSEA,²³ the interplay between the international legal instruments and the Convention will be scrutinized, since it is of pivotal significance to identify the definition of offenses required to be transposed into the domestic legal system, equally considering the Lanzarote Committee's²⁴ report²⁵ on the role of media in informing about child sexual abuse.²⁶ On the other hand, the Directive 2011/93/EU incumbent on Member States (hereinafter MS) to adopt the rules affording minimum protection with regards to illicit acts, notably manipulation and sexual activities in the cyberspace.²⁷ As the secondary EU instrument largely reflects the approach of the Lanzarote Convention, it is considered crucial to investigate how the minimum standards concerning the criminal sanctions related to OCSEA offenses should be harmonized between the MS. The comparative analysis of these instruments will show how the various levels of regulation complement and strengthen each other. Taking into account the need of bringing such grave illicit acts before justice, provisions on child-friendly proceedings will be highlighted safeguarding the protection of child-victims via the judicial system.²⁸

By the same token, chapter 3 will present the most predominant mechanisms to effectively counter OCSEA. In this context, the research analysis will start by

²² Article 9 (2) OPSC.

²³ Quayle, E, 'Prevention, Disruption and Deterrence of Online Child Sexual Exploitation and Abuse', ERA Forum 21, 23 September 2020, p. 430.

²⁴ Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

²⁵ Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, *Protection of Children against Sexual Abuse in the Circle of Trust*, 2nd Implementation Report, 31 January 2018, T-ES(2017)12, available at: <https://rm.coe.int/t-es-2017-12-en-final-report-cot-strategies-with-executive-summary/1680788770>

²⁶ CoE, Lanzarote Committee, 'Protection of children against sexual abuse in the circle of trust: workable strategies', 13 February 2018, available at: <https://www.coe.int/en/web/portal/-/protection-of-children-against-sexual-abuse-in-the-circle-of-trust-workable-strategies>

²⁷ Nour, A, 'Sexual Abuse against Minors. The Correlation between the Directive 2011/92/EU and the Offenses against Sexual Freedom and Integrity', Conf Int'l Dr, 2015, p. 840.

²⁸ FRA, 'Handbook on European Law relating to the Rights of the Child', 2015, p. 120, available at: <https://fra.europa.eu/en/publication/2015/handbook-european-law-relating-rights-child>

considering why the law enforcement investigations are placed between the most prominent means to combat OCSEA and thus the role of Interpol will be underscored. Further, at a regional level, this study will address the necessity for the states to espouse the '*CoE strategy for the Rights of the Child*' along with the '*Committee of Ministers Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment*'²⁹ in which specific measures to address the relevant risks for children are recommended. Moreover, in respect of the Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms³⁰ (hereinafter ECHR), the chapter will highlight the importance of available remedies and how child-friendly avenues can be met in compliance with the principles set out in the respective guidelines adopted by the Committee of Ministers.³¹ In the same vein, the '*EU Strategy for a more effective fight against child sexual abuse*' will be evaluated as it serves as a pivotal catalyst to the increasing threat of the OCSEA by strengthening the prevention, investigation and assistance to children-victims.

Lastly, chapter 4 will present the findings of the study after having assessed the effectiveness and functionality of both the legal instruments available as well as the global and regional responses in preventing and combating the OCSEA. Particular emphasis will be paid to the Model National response on preventing and tackling OCSEA to the extent that it consists of multi-disciplinary approaches which may incentivize governments and other public and private stakeholders take the necessary steps to determine holistic measures to prevent and combat OCSEA.

The method of collection of relevant materials has been the online research through the electronic data, e-books, academic journals along with international and European legal instruments. Relevant reports, working papers and policy documents have been used in order to adequately explain the magnitude of the phenomenon, the

²⁹ Committee of Ministers (n 3).

³⁰ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

³¹ Committee of Ministers, '*Guidelines on Child-Friendly Justice*', 17 November 2020, available at: <https://rm.coe.int/16804b2cf3>

importance of using the right terminology and the effective implementation of the laws available.

1. Online Sexual Exploitation and Sexual Abuse of Children: A Comprehensive Explanation of the Agreed Definitions

1.1 Online Child Sexual Abuse

Children's presence in the digital environment and the right to access several services without parental consent may well be allowed before the age of 18. A certain age limit may apply for various social media accounts -for instance just the age of 13- which makes children even more vulnerable, however all underage individuals are entitled to special protection,³² as they are full-fledged rights' holders. It is, though, of utmost importance the fact that the illegal image of the child is still outlawed even when the child as a victim of the sexual abuse material has moved into adulthood.³³

Against this background, Article 34 of the UNCRC requires that '*State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse*' and further states that the incitement to any unlawful sexual activity, exploitation by way of prostitution or unlawful sexual practices as well as the involvement of children in pornographic materials are forbidden and must be prevented. In addition, sexual abuse of the child is particularly reflected in Article 18 of the Lanzarote Convention. Within this framework, the criminalization of the illicit acts includes (a) engagement in sexual activities with a child who has not yet reached the legal age for sexual activities under the provisions of national law, (b) engagement with a child in sexual activities where this is an outcome of coercion, force or threats; abuse derives from the circle of trust; abuse is linked to the notion of susceptibility, notably due to a physical or mental disability or a situation of dependency. A meticulous approach is equally mirrored in Article 3 of the Directive 2011/93/EU where offences related to the fact of causing a child to witness sexual activities or abuse, engaging in sexual activities with children as well as coercion, force or threat against juveniles with the purpose of inducing them into such activities with a third party are included.³⁴

³² Interagency Working Group in Luxembourg, 'Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse', 28 January 2016, p. 11, available at: <http://luxembourgguidelines.org/>

³³ Ibid.

³⁴ Ibid, p. 18.

In view of the above, OCSA may have a manifold dimension and take various forms. The link to the digital environment is a substantial limb as part of the legislative definitions, which means that such acts may be conducted partially or fully through the use of the Internet. A commonly committed offence in the cyberspace, namely the *online grooming*,³⁵ constitutes a special form of harassment of minors in which the perpetrator intends to manipulate the child, by having the absolute control over the latter, and subsequently sexually abuse him/her³⁶ whereas the term is part of the so-called *solicitation of children for sexual purposes*. It embodies the creation of a relationship with a minor either in person or by the use of the ICTs to facilitate online or offline sexual interaction with the child.³⁷ Specific examples of the aforementioned practice may encompass a pedophile who is preparing a child for a meeting, particularly through online chat rooms, with the view of committing a sexual offence or even the illicit conduct of approaching the minor over the digital platforms, in an attempt to enticing the child to have a sexual contact.³⁸ In the same context of solicitation, *sexual extortion* or *sextortion* is the blackmail of an individual enabled by self-generated images of that person intended to extort sexual favors, money or other benefits under the threat of disseminating the material without the consent of the depicted individual. Intimidation and coercion are integral components of the crime and in this regard social media offer a fertile ground for such actions.³⁹

Furthermore, *live online child sexual abuse* constitutes another gross violation of the sexual freedom and integrity of the child. The present term refers to the sexual exploitation of the minors by way of prostitution and sexual performances and to the production of the CSAM. It usually depicts a binary abuse of the child, namely coercion to participate in sexual activities which are concurrently transmitted online through

³⁵ Grooming is also being delineated as *online enticement of children for sexual acts*, see J.M. Petit, 'Report by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography', para. 13.

³⁶ Christian, A, 'Grooming in the Online Environment', *Journal of Law and Public Administration*, vol. 1, no. 2, 2015, p.102.

³⁷ EPCAT International (n 2) 2.

³⁸ Interagency Working Group in Luxembourg (n 32) 51.

³⁹ Ibid, p. 52.

the ICTs and watched by other people remotely. Frequently, those persons are the ones who have requested the sexual abuse of the child, dictating how the sexual activity should be conducted whilst the payment of money '*enabling*' the abuse to be carried out is not precluded.⁴⁰ In the same vein, *live streaming*⁴¹ is associated with the transmission of the relevant data forthwith to the beholder, who can watch and engage as long as the abuse is taking place. What is important to note is that once the streaming is ceased, the CSAM gets lost unless the perpetrator intentionally records it. As a result, the perception of impunity is intensified and thus post-event investigation remains challenging, mostly because the retrieval of the illicit material as well as the identification of both the victims and the sexual predators pose a real threat to the execution of justice.⁴²

Although Article 34 of the UNCRC pertains to the '*exploitative use of children in pornographic performances*', live streaming of child sexual abuse is only tacitly criminalized by other regional instruments. In particular, Article 21 (1) of the Lanzarote Convention criminalize the act of causing and coercing juveniles to be part of pornographic performances as well as the act of deliberately attending the latter. On the other hand, the act of aiding or abetting these activities is articulated in Article 24.⁴³ In addition, the OPSC prescribes that '*the offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation of the child*' constitutes an illicit act under Article 3 (1) (i) (a). Nonetheless, these provisions cannot generally cover the question of live streaming, since the abuse or performance is commonly not recorded.⁴⁴

In view of the above, it is noteworthy to mention that CSAM embodies the notion of any representation, by whatever means, of a minor being part in real or simulated

⁴⁰ Ibid, p. 46.

⁴¹ Alternatively, *on-demand child sexual abuse*.

⁴² Interagency Working Group in Luxembourg (n 32) 47.

⁴³ ECPAT International, 'Live Streaming of Child Sexual Abuse in Real-Time', SECO Manifestations Factsheet, available at: [https://www.ecpat.org/wp-content/uploads/legacy/SECO%20Manifestations Live%20streaming%20of%20child%20sexual%20abuse%20in%20real-time 0.pdf](https://www.ecpat.org/wp-content/uploads/legacy/SECO%20Manifestations%20Live%20streaming%20of%20child%20sexual%20abuse%20in%20real-time%200.pdf)

⁴⁴ Ibid.

explicit sexual performances or any representation of the sexual parts of the child, notably for sexual purposes.⁴⁵ This refers to the imagery or videos portraying a child who is engaged or depicting as being engaged in explicit sexual activities.⁴⁶ The term is often used interchangeably with the concept of child pornography, the latter though should be avoided as it subverts the severity of the abuse from the child's perspective and it implies consent whilst the minor cannot legally give consent. Equally, pornography is commonly used to describe material picturing adults engaged in consensual sexual activities disseminated with the intention to offer sexual pleasure.⁴⁷ Being aware of the constituent parts of the CSAM may lead to effective policies, such as blocking or removal of such illicit material and thus safeguard child's dignity in the digital space.

1.2 Online Child Sexual Exploitation

The notion of sexual violence is commonly used as an '*umbrella term*' that encompasses both sexual exploitation and sexual abuse. This is consistent with the UNCRC General Comment 13⁴⁸ which explicitly points out that violence is considered to mean '*all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse*'.⁴⁹ As it has been previously explained, ICTs afford children a breadth of opportunities to create and share content as well as contact people all over the world. Given that many aspects of our daily life have been enabled by the growing use of the digital tools, online threats may entail serious forms of criminality which eventually deprive children of their rights and safety. Offences regarding CSAM and the ones referring to behaviors towards sexual contact with children making use of the ICTs are generally part of the online sexual abuse and online sexual exploitation concepts. As the illicit acts pertaining to

⁴⁵ ECPAT International, 'Child Sexual Abuse Material or Child Pornography', SECO Manifestations Factsheet, available at: https://www.ecpat.org/wp-content/uploads/legacy/SECO%20Manifestations_CSAM.pdf

⁴⁶ INHOPE, 'What is Child Sexual Abuse Material?', 4 January 2021, available at: <https://www.inhope.org/EN/articles/child-sexual-abuse-material>

⁴⁷ Ibid.

⁴⁸ UN Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13.

⁴⁹ Ibid, paras. 4 and 25.

the former have been already analyzed, this section seeks to address the most prevailing aspects of the OCSE which will be simultaneously read with the applicable international and regional legal provisions.

The term *online sexual exploitation of children* refers the use of the Internet, as a means to sexually exploit juveniles. It mostly incorporates all acts of sexually exploitative nature performed against a minor that at some point have a certain connection to the digital environment. It encompasses any use of the ICTs amounting to sexual exploitation or causing children to be sexually exploited or even leading to the creation of images or other material depicting the performance of such illicit acts. The latter may result in selling, buying, possessing of, disseminating or transmitting such material.⁵⁰

More specifically, while children are connected in the online environment, they may be sexually exploited in various ways. Enticing, manipulating or threatening a child into performing sexual acts with a use of a web-camera is one a common form of exploitation.⁵¹ The increasing use of web-cameras in sexual contexts constitutes a trend within the social media era, as they facilitate a distinct form of Internet use characterized by real-time incessant visual and auditory interplay.⁵² At the same time, identification and/or grooming of minors online with the intention to exploit them, regardless of whether the sexual acts are conducted online or offline constitutes another form of sexual exploitation. Further, OCSE may be understood as part of any form of distribution, dissemination, importing, exporting, selling, possession of, or deliberately acquiring access to CSAM, which might have taken place either online or offline.⁵³

Against this backdrop, child pornography, which should be actually replaced by the terms CSAM and CSEM, is meant to be conceived as sexualized material portraying or representing children. For the sake of consistence with the *European Parliament's*

⁵⁰ Interagency Working Group in Luxembourg (n 32) p. 27.

⁵¹ Ibid.

⁵² Koops, T, et al., 'Online Sexual Activity Involving Webcams – An Overview of the Existing Literature and Implications for Sexual Boundary Violations of Children and Adolescents', 2018, 36 (2), Behavioral Sciences and the Law, p. 183.

⁵³ Interagency Working Group in Luxembourg (n 32) p. 28.

Resolution on Child's Sexual Abuse Online,⁵⁴ it is crucial to use the proper terminology for crimes against children, including the description of images of child sexual abuse, and to use the suitable term CSAM rather than child pornography. As previously stated, the latter entails legal consent to the sexual acts whereas children cannot legally consent to those acts. Hence, law enforcement agencies, such as Interpol and Europol, tend to use the terms CSAM and CSEM and dismiss child pornography, avoiding thus the risks insinuating that the sexual acts were conducted with the child's consent.⁵⁵

Moreover, special attention should be paid to the *sexualized images of children*. These include pictures of minors posing semi-nude or nude with a particular focus on sexualizing the child. Irrespective of the fact that those images may not be considered illegal under existing national laws, they can have a detrimental effect on the child, in various ways and notably when they are circulated online. The posing in itself may not be criminalized, though their dissemination should be viewed as a grave violation of the child's right to privacy.⁵⁶ Greater emphasis should be given to the fact that sexualization of children within this framework is not always an objective. A decisive criterion in order to evaluate whether an illicit act is committed is the use of the image for sexual purposes, either -for example- for gratification or arousal. The major issue is when those pictures are disseminated online on pornographic webpages or even on websites for persons keen on sexual interests in children. The latter should be seen as a gross violation of the child's right to privacy, regardless of whether the pictures are pornographic or not.⁵⁷

Self-generated images, as part of the self-directed sexual material, may entail to a coercive, abusive or exploitative use of such pictures, although children themselves may willingly produce these images or videos. In fact, this does not mean that they give consent or are accountable for the exploitative use or dissemination of such material. On the contrary, they should never encounter criminal liability due to their

⁵⁴ European Parliament resolution on child sexual abuse online (2015/2564(RSP)), P8_TA(2015)0070, 11 March 2015, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015IP0070&from=EN>

⁵⁵ Interagency Working Group in Luxembourg (n 32) 39.

⁵⁶ Ibid, p. 42.

⁵⁷ Ibid.

role in producing or making available this content.⁵⁸ Therefore, it is of utmost significance to be aware that while using the term self-generated, the assumption ought to be it is the outcome of a coercive or abusive relationship of the child with an adult or even another child. In the same vein, *sexting* is probably the most ordinary type of self-generated sexually explicit content involving juveniles. Non-consensual aspects of such activity, namely sharing or receiving undesirable sexual messages, photos or videos, are used with the intention to interact, threaten or groom the minor. Sexting is a common practice amongst young individuals, and often consensual, however it may amount to sexual abuse or sexual exploitation of the child. In this regard, the child should never be held liable for producing CSAM⁵⁹ but rather be protected by national jurisdictions, law enforcement mechanisms and other stakeholders responsible for the investigation and prosecution of the offenders.

In relation to the international and European legislative framework referring to the child pornography, Article 34 of the UNCRC stipulates that *'the exploitative use of children in pornographic performances and material'* is forbidden, however there is not a clear definition of the constituent limbs of child pornography. This gap is filled by Article 2 of the OPSC which defines child pornography as *'any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes'*. Besides, in compliance with the Article 3 (c) States shall criminalize the acts of *'producing, distributing, disseminating, importing, exporting, offering, selling, possessing for the above purposes of child pornography'*. The term is equally included in Article 20 (2) of the Lanzarote Convention according to which *'any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes.'* Further, under paragraph 1, the acts of *'producing child pornography; offering or making available child pornography; distributing or transmitting child pornography; procuring child pornography for oneself or for another person; possessing child pornography, and knowingly obtaining access to child pornography'* are prohibited. The term is similarly described in the

⁵⁸ Ibid, p. 43.

⁵⁹ Ibid, p. 44.

Directive 2011/93/EU in its Article 2 where child pornography is understood as *‘(i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; (ii) any depiction of the sexual organs of a child for primarily sexual purposes; (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes.’*⁶⁰ As child pornography seems to be a perplexed legal definition, special attention should always be paid to the applicable legal instruments which describe such offences and thus law enforcement mechanisms will be able to effectively combat such phenomena and detach children from criminal liability.

⁶⁰ Ibid, p. 35.

2. Legislative Framework to Combat Online Sexual Exploitation and Sexual Abuse of Children: Upholding Children's Safety through the International and European Instruments

2.1 General Considerations

Children have the right to be protected from all forms of violence, exploitation and abuse in the digital era. Any protective measures should be in line with the *best interests of the child* principle⁶¹ as well as the evolving capacities of the child and not overly hinder the exercise of other rights.⁶² The existence of advanced and harmonized legislation is considered crucial and may guide states and other private actors to end impunity of the perpetrators and protect children from online sexual exploitation and abuse. The relevant international and European laws provide for a comprehensive scheme for effective investigation and prosecution of the offenders while facilitating reporting, prevention and access to justice for children subjected to online sexual violence.⁶³

The obligations arising out of the UNCRC impose of the state parties to the Convention the duty to apply not only to all aspects of children's survival and well-being, their growth, protection and their views being heard, but also to all places they inhabit, inter alia the digital space. Provision, participation and protection rights are enshrined in the UNCRC which are inherently interrelated, indivisible and interdependent and all duty bearers and stakeholders must make sure that they are promoted and safeguarded in the online environment. The protection of those rights must be effectively accomplished by being profoundly rooted into the legal, government, business, social and education sectors ruling and mediating our digital lives.⁶⁴ In the same vein, the four general principles set out in the UNCRC must be respected in all

⁶¹ It constitutes an overarching principle and is prescribed in Article 3 of the UNCRC; See how the principle is interpreted: UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 29 May 2013, CRC /C/GC/14.

⁶² Committee of Ministers (n 3) p. 19.

⁶³ EPCAT International (n 2) p. 9.

⁶⁴ European Network of Ombudspersons for Children (ENOC), 'Children's Rights in the Digital Environment', position statement, 27 September 2019, p. 3, available at: <http://enoc.eu/wp-content/uploads/2019/10/ENOC-2019-Statement-on-Childrens-Rights-in-the-Digital-Environment-FV.pdf>

actions concerning children, namely the principle of non-discrimination (Article 2), the best interests of the child (Article 3 (1)), the right to survival and development of the child (Article 6) as well as the right to be heard (Article 12).⁶⁵ Additionally, the OPSC covers many forms of sexual exploitation and abuse of minors and particularly mentions child pornography.⁶⁶ It actually complements the UNCRC on the grounds that it clearly addresses -amongst others- the issue of sexual exploitation of children. In this regard, the universal ratification of both the UNCRC and the OPSC is an international priority for the UN, as the establishment of a joint normative foundation is required through which an effective coordination between national efforts is achieved and thus the transnational nature of the crime does not result in impunity.⁶⁷

At the regional level, the Lanzarote Convention constitutes a culmination of a long line of international legal instruments espousing an approach to combat sexual depredations against children. The Convention situates the protection of children against sexual encroachments and further echoes the standards of the OPSC. Hence, it requires the signatory parties to criminalize international conduct entailing several acts of child sexual abuse, child prostitution, child pornography, witnessing of sexual performances, and solicitation of juveniles for sexual purposes.⁶⁸ At the EU level, the Directive 2011/93/EU repeals the Framework Decision 2004/68/JHA and in addition, it transforms its content into the form of a Directive, a specific type of legislative act which the Treaty of Lisbon⁶⁹ made possible. It encompasses a streamlined definition of what constitutes child pornography, heightened criminal sanctions, the criminalization of possession and obtaining of CSAM, the new offence of grooming

⁶⁵ For more information, see: Lievens, E, (n 6) pp. 491-494.

⁶⁶ Quayle, E (n 23) p. 430.

⁶⁷ European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, 'Combating Child Sexual Abuse Online', Study for the LIBE Committee, October 2015, p. 30, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536481/IPOL_STU\(2015\)536481_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536481/IPOL_STU(2015)536481_EN.pdf)

⁶⁸ Bitensky, S, H, 'Introductory Note to Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse', International Legal Materials, vol. 49, no. 6, 2010, p. 1663.

⁶⁹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 13 December 2007, OJ C 306, p. 1-271.

and a provision referring to the removal and blocking of webpages containing child pornography.⁷⁰

2.2 International Instruments

2.2.1 The UN Convention on the Rights of the Child and the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography

The UNCRC represents the most significant international legal instrument specifically devoted to the rights of the child, with its Article 34 requiring states to protect children from all forms of sexual violence and abuse and further take measures to prevent sexual exploitation and abuse, prostitution and use in pornography, as set out in paragraphs (a), (b) and (c).⁷¹ In that context, the Committee on the Rights of the Child adopted treaty-specific guidelines as regards the *Periodic Reports*⁷² through which it seeks information on '*bilateral, regional and multilateral agreements*', particularly in relation to the judicial cooperation and collaboration among law enforcement officials.⁷³ Hence, State Parties are required to provide information regarding, inter alia, the issue of sexual exploitation and abuse of children,⁷⁴ as defined in Article 34 and take into consideration the Committee's General Comment No. 13/2011 on the right of the child to freedom from all forms of violence.⁷⁵

The UNCRC, in its Article 19, requires that State Parties thoroughly '*provide appropriate legislative, administrative, social and educational protective measures*' to guarantee child's safety from all forms of violence, notably sexual exploitation and abuse. Therefore, State Parties are obliged to make sure that prevention and

⁷⁰ European Parliament, (n 67) p. 13.

⁷¹ UNICEF, 'Implementation Handbook for the Rights of the Child', Fully Revised Third Edition, September 2007, p. 513, available at: https://www.unicef.org/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf

⁷² Committee on the Rights of the Child, 'Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child', CRC/C/58/Rev.3, 3 March 2015, available at: file:///C:/Users/%CE%92%CE%B1%CF%83%CE%B9%CE%B1/Downloads/CRC_C_58_Rev.3-EN.pdf

⁷³ UNICEF, (n 71) p. 527.

⁷⁴ CRC, (n 72) para. 5.

⁷⁵ CRC, (n 48).

identification, reporting, investigation and monitoring of incidents of child maltreatment are respected and adequately implemented.⁷⁶ Within this framework, one of the most prominent provisions prescribed in the UNCRC is Article 39 which stipulates the commitment of States to take the necessary steps with the intention to promote the physical and psychological recovery and social reintegration of a child victim, so as to reinforce self-respect and dignity of the latter.

Equally, the UNCRC along with the OPSC form the most comprehensive international legal instruments which promote and guarantee the rights of the child and protect children from sale, sexual exploitation and sexual abuse. These treaties were adopted at a time when sexual related offences with a link to the digital environment were much less conducted as the ICTs and social media were less developed and widespread. Hence, despite that the OPSC is considerably more relevant to the cyber-enabled crimes against children, its provisions require further interpretation and adjustment to the contemporary realities.⁷⁷ More specifically, the OPSC which supplements the UNCRC, is unambiguously addressing the sexual exploitation of children as it prohibits the sale of children, child prostitution and child pornography.⁷⁸

The prevention of sexual exploitation of children is predominantly dependent on protection measures, mostly because Article 9 of the OPSC requires States to *'protect children and young people by adopting or strengthening, implementing and disseminating laws, administrative measures, social policies and programmes to prevent the offences prescribed in thereto'*. Under paragraph 2, States shall take the appropriate steps to raise awareness in the public at large, notably through information, education and training curricula referring to the preventive measures and detrimental effects of the illicit acts included in the Protocol. For this reason, empowering children through active and meaningful participation, especially in

⁷⁶ European Parliament, (n 67) p. 29.

⁷⁷ CRC, 'Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography', 10 September 2019, CRC/C/156, para.1.

⁷⁸ For the accurate/agreed definitions of the above, see sections 1.1 and 1.2.

relation to the provision of information can be viewed as a child-centered strategy to prevent and combat OCSEA.⁷⁹

Furthermore, State Parties are required to take all appropriate measures to strengthen international cooperation by the conclusion of *'multilateral, regional, bilateral agreements for the prevention, detection, investigation, prosecution and punishment of the offenders'* and reinforce international cooperation between international organisations, national and international non-governmental organisations and their domestic authorities in compliance with Article 10 of the OPSC. Accordingly, the development and implementation of a comprehensive and structured mechanism *'for the collection, analysis, monitoring and impact-assessment of data'*, is strongly recommended to signatory parties to the OPSC by the CRC.⁸⁰ This should be coordinated among all the relevant stakeholders, including child protection entities, and should be synchronized coherently so as to avoid any potential inconsistencies of data between various State agencies. At a minimum level, the CRC urges States to coordinate this mechanism with due respect to the right to privacy of children and disaggregate the data by sex, age and form of exploitation.⁸¹

Against this backdrop, the OPSC itself should be used as a dynamic legislative tool according to which States are required to adopt or strengthen, implement and disseminate laws, administrative actions and child-centered policies to prevent the offences covered by the Protocol. The CRC similarly urges the State Parties to take all appropriate steps in order to identify and monitor children at risk of being subjected to online sexual exploitation and sexual abuse by paying special attention to prevention measures which may end such egregious practices and thus espouse a gender perspective to ensure that different methods having an impact on boys and girls are sufficiently tackled.⁸²

⁷⁹ UN Special Rapporteur / Maud de Boer-Buquicchio, 'Report on the Sale of Children, Child Prostitution and Child Pornography', 22 December 2014, A/HRC/28/56, pp. 16-17.

⁸⁰ CRC, (n 77) para. 20.

⁸¹ Ibid.

⁸² Ibid, paras. 31-33.

2.3 European Instruments

2.3.1 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

The Lanzarote Convention is not the first treaty within the CoE which protects the rights of the child, though it is considered as the most comprehensive international legislative act devoted to the protection of minors from violence and in fact in all contexts and aspects of life. Its fundamental aim is to prevent and combat sexual violence against children, to protect the rights of juveniles subjected to it and ultimately promote international cooperation amongst states and collaboration between different stakeholders at national level.⁸³

In terms of substantive criminal law, the Lanzarote Convention goes further than the OPSC, as Article 18 covers the sexual abuse of children in the circle of trust, solicitation of children for sexual purposes under Article 23 and interestingly corruption of minors when there are forced to witness sexual exploitation and sexual performances even without being part of it.⁸⁴ Most importantly, the Convention constitutes the first treaty criminalizing online grooming, namely the preparatory stage of child sexual abuse and child pornography. In this regard, the Lanzarote Committee⁸⁵ held that the solicitation of children through the digital means does not automatically amount to a meeting in person but rather the offences may be conducted even online and this can have detrimental effects on the child.⁸⁶

In light of the above, it should be stressed that the Lanzarote Convention is viewed as the most groundbreaking legal instrument in the field of child protection from all forms of violence, given that it provides for a specific guidance on multi-stakeholders' cooperation and structured governance aimed at preventing the victimization of

⁸³ Rutai, Z, 'The Lanzarote Committee: Protecting Children from Sexual Violence in Europe and Beyond', *Journal of European and International Law*, vol. 2020, no. 1, p. 24.

⁸⁴ *Ibid*, pp. 25-26.

⁸⁵ The Lanzarote Committee is the body established in order to monitor whether Parties effectively implement the Lanzarote Convention. For more information, see: CoE, Lanzarote Committee, available at: [https://www.coe.int/en/web/children/lanzarote-committee#%2212441908%22:\[0\]](https://www.coe.int/en/web/children/lanzarote-committee#%2212441908%22:[0])

⁸⁶ Lanzarote Committee, 'Opinion on Article 23 of the Lanzarote Convention and its Explanatory Note', 17 June 2015, available at: <https://edoc.coe.int/en/children-s-rights/7064-lanzarote-committee-opinion-on-article-23-of-the-lanzarote-convention-and-its-explanatory-note.html>

children and bring offenders to justice. The establishment and designation of an independent national or local authority is stipulated in Article 10, with a clear mandate to prevent and combat sexual exploitation and abuse of children, having specific resources available and tools for data collection in full compliance with the requirements of personal data protection.⁸⁷ The role of industry in combating child sexual exploitation and abuse is underlined in Article 9 (2) whereby the private sector, including the ICTs has the responsibility to enforce internal norms through self-regulation and co-regulation. In this context, removing CSAM is a cardinal constituent of the effective responses to OCSEA, as such entities should be able to hinder access to CSAM.⁸⁸

Similarly, the Convention is a milestone provided that it requires State Parties to harmonize their domestic legislation in an attempt to facilitate the prosecution of the perpetrators accountable for the crimes referred to in the Convention by ensuring jurisdiction in reliance not only on the common principles of territoriality and nationality of the offender and, even in some cases the injured party, but outstandingly establishing jurisdiction based on the habitual residence of the violator or the victim. Corporate liability is evenly laid down with specific types and levels of sanctions as well as compounded circumstances, considering prior convictions and a series of judicial cooperation tools.⁸⁹

In conjunction with the innovative substantive law and enhanced judicial cooperation provisions, preventive and protective measures are meticulously stipulated, addressing the actual needs of the child-victim by providing child-oriented assistance and intervention. In particular, Articles 4-9 set out the prevention measures whereby persons engaged in working with children should be screened and trained. Awareness raising and education for minors about the safe use of the Internet should be provided along with specific information about potential risks of being subjected to online sexual exploitation and abuse, including guidance on how they can effectively protect themselves. Preventive intervention programmes should be introduced for the

⁸⁷ CoE, (n 4) p. 15.

⁸⁸ CoE, (n 4) p. 18.

⁸⁹ European Parliament, (n 67) p. 26.

offenders, regardless of the fact that they have not been already charged or convicted or the crime has not been reported to the competent authorities. The right of the child to be heard should be fulfilled accordingly, as children should be consulted '*in the development and implementation of legislative, policy, educational and other measures to address all forms of violence*' and thus due weight should be given to their '*views in all aspects of prevention, reporting and monitoring of violence against them*'.⁹⁰

Protective measures and assistance to children under the Convention requires States to ensure -amongst others- the adoption of precise investigative and criminal procedure measures in line with the needs of the child, to establish specific policies and strategies in order to preclude juveniles from any possible risk of retaliation and repeat victimization as well as ensure that professional confidentiality rules do not discourage professionals working with children from reporting sexual exploitation and abuse of the child.⁹¹ Intervention programmes as laid down in Articles 15-17 of the Convention should be implemented so as to prevent and decrease the risk of repeated offences of the same nature and facilitate the access of the offenders to such programmes for the crimes referred thereto.⁹²

2.3.2 EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography

The Directive 2011/93/EU is placed at the forefront of the EU action to combat sexual violence against children. A more sophisticated and detailed definition of child pornography is provided in Article 2 (c), increased criminal penalties, the criminalization of '*grooming*' as well as the criminalization of the possession and

⁹⁰ UN Committee on the Rights of the Child (CRC), '*General comment No. 12 (2009): The right of the child to be heard*', 20 July 2009, CRC/C/GC/12, paras. 118-119.

⁹¹ European Parliament, (n 67) p. 27.

⁹² Ibid.

acquisition of CSAM.⁹³ The Directive's precedent, namely the Framework Decision 2004/68 JHA⁹⁴ aimed at legal homogeneity amongst the MS with regards to the legal regulation of the issues in question and the establishment of an effective judicial cooperation, taking into account the new types of the offences which had been emerging due to the rapid evolution of the ICTs.⁹⁵ The approach of the Directive is similar with the one of the Lanzarote Convention, especially in connection with the notion of child pornography.⁹⁶ In fact, the range of criminal sanctions that should be applied to the offences related to sexual exploitation of children, child pornography and solicitation of children for sexual purposes are postulated in Articles 4-6. Remarkably, Article 8 allows MS to decide whether Articles 5 (2) and 6 are applicable to the '*production, acquisition or possession of CSAM in the event children have reached the age of sexual consent*' and specifically where the material was produced or possessed with the consent of the minors involved for private use. The above should be read in consonance with the Recital 20 whereby it is pointed out that the present instrument is not intended to be applied to consensual activities in which children may be involved and which can be viewed as the normal exploration of sexuality in the context of human development in light of the various cultural backgrounds and legal traditions.

Against this backdrop, it should be stressed that within the framework of child pornography only '*intentional conduct*' triggers criminal liability, namely where activities are committed without a right. The latter derives from the Recital 17 which allows MS to provide a defense in compliance with the conduct pertaining to pornographic material but maintaining a medical, scientific or similar purpose. It also allows domestic regulations to exempt activities undertaken by authorities for the sake of criminal proceedings or the prevention, identification or investigation of crimes.⁹⁷ In the same vein, the Directive in its Article 4 (3) criminalizes pornographic

⁹³ European Parliament, (n 67) p. 13.

⁹⁴ Council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography OJ L 13.

⁹⁵ Nour, A, (n 27).

⁹⁶ Chawki, M, et al. 'Online Sexual Harassment: Issues & Solutions', Journal of Intellectual Property, Information Technology and Electronic Commerce Law', vol. 4, no. 2, 2013, p. 80.

⁹⁷ European Parliament, (n 67) p. 17.

performance in case a child was coerced or forced to participate or even after threats for such purposes. Pornographic performance, under Article 2 (c), shall mean a live exhibition aimed at an audience, including by means of ICTs where *‘the child is engaged in real or simulated sexually explicit conduct or the sexual organs of the child for primarily sexual purposes.’*⁹⁸

In light of the above, it is of crucial importance to mention how the Directive addresses the prevention of child sexual abuse and the main components of the specific policies and strategies MS have to implement. In this regard, prevention has two essential elements, namely the time before the crime is committed in which case information and awareness-raising campaigns targeted at both child potential victims and perpetrators and secondly, once a crime has been committed where sufficient intervention measures and prevention of recidivism shall be the main objectives.⁹⁹ Articles 10, 21-24 and 25 set out those goals according to which MS are required to take *‘appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation and of children’*. Equally, with due respect to Article 23, they shall take *‘appropriate action, including through the internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate, in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of children, becoming victims of sexual abuse or exploitation’*.

In particular, with the intention to reduce the potential risks of OCSEA before the crime is committed, educating children should be seen as key preventive measure through which minors would have the opportunity to identify the risks and illicit acts and be able to report them. The EU has been proactive in this field in the sense that the development of the multi-annual programme 2009-2013 on protecting children

⁹⁸ Ibid.

⁹⁹ Scherrer, A, et al., ‘Combating Sexual Abuse of Children – Directive 2011/93/EU’, European Parliamentary Research Service (EPRS), European Implementation Assessment, Study, April 2017, p. 28, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2017/598614/EPRS_STU%282017%29598614_EN.pdf

using the Internet and other communication technologies¹⁰⁰ aimed at increasing knowledge of the use of new technologies by children, identify and combat the risks to which children are exposed. The programme similarly supported the EUKidsOnline network and has integrated the *'better internet for kids'* strategy in the context of the EU digital market strategy.¹⁰¹

Along with the preventive measures applied to children, the Directive tackles the same issue on the side of the offenders. Article 22 prescribes that *'MS shall take the necessary measures to ensure that persons who fear that they might commit any of the crimes referred to Articles 3-7 may have access to effective programmes designed to evaluate and prevent the risk of such offences being committed'*. In fact, the stigma of pedophilia and the fear of criminal repercussions may prevent non-offending pedophiles from making an attempt to ask for help. As pointed out by experts in the field, *'non-offenders who confess sexual urges toward children are usually turned away by professionals who are untrained or unwilling to help, leaving these adults or adolescents to struggle on their own'*.¹⁰² In Germany, a European pioneer project launched in 2005, the so-called *'Dunkelfeld project'*,¹⁰³ providing cognitive behavior therapy sessions, helps potential offenders enhance their ability to empathize with and take the standpoint of a potential victim as well as increase their sexual control.¹⁰⁴

On the other hand, after the abuse has been committed the implementation of intervention programmes preventing recidivism seems inevitable. Those measures are regulated under Article 24 which requires MS to make such programmes available at any time during the criminal proceedings, inside and outside of prison and therefore prevent and decrease the risk of such offences. It should be stressed, though, that such programmes should take into consideration the developmental needs of children

¹⁰⁰ Decision No 1351/2008/EC of the European Parliament and of the Council establishing a multiannual Community programme on protecting children using the Internet and other communication technologies, 16 December 2008, OJ L 348.

¹⁰¹ Scherrer, A (n 99) pp. 31-32.

¹⁰² Muller, T, R, 'Non-Offending Pedophiles Suffer from Isolation', Psychology Today, March 2016, available at: <https://www.psychologytoday.com/us/blog/talking-about-trauma/201603/non-offending-pedophiles-suffer-isolation>

¹⁰³ For more information, see: Mokros A, et al. 'The "Dunkelfeld" Project for Self-Identified Pedophiles: A Reappraisal of its Effectiveness', The Journal of Sex Medicine, May 2019, 16 (5), pp. 609-613.

¹⁰⁴ Scherrer, A (n 99) p. 33.

(Article 24 (2)). It is reassuring that MS have transposed this provision through various means, such as *'legislation, a combination of legislation and other measures or other legal instruments'*, as noted by the European Commission's report on the assessment of the transposition of the present Directive.¹⁰⁵

An additional innovation introduced by the Directive is the possibility of removing and blocking websites containing CSAM. Hence, MS are obliged to take the necessary measures to ensure the prompt removal of websites with child pornography material or of those disseminating the latter and further to attempt to obtain the removal of those pages which are also hosted outside of their territory. MS are equally encouraged to take the appropriate steps and block access to websites containing or disseminating child pornography towards online users within their territory in compliance with Article 25 (2), notwithstanding there is no obligation to do so. The form of the transposition and implementing actions may vary, as it is explained by the Recital 47 whereby various types of public actions are articulated, *videlicet* legislative, non-legislative, judicial or other initiatives, as long as the outcomes specified in the said Article are fulfilled effectively.¹⁰⁶ For such purposes, cooperation amongst the private sector, civil society and national authorities together with law enforcement agencies and the judiciary is vital in implementing the policies deriving from Article 25 and thus successfully fighting the dissemination of CSAM.¹⁰⁷

On top of that, it should be underscored that the Directive has a victim-protection and child-oriented approach on the grounds that the assistance and support which children are entitled to should be in line with the best interests of the child, considering their views, needs and concerns.¹⁰⁸ Thus, the juveniles subjected to online sexual exploitation and abuse should be afforded holistic support before, in the course of and after the conclusion of criminal proceedings. The detailed rules prescribed in

¹⁰⁵ European Commission, 'Report on assessing the extent to which the Member States have taken the necessary measures in order to comply with Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography', 16 December 2016, COM (2016) 871, p. 18.

¹⁰⁶ European Commission, 'Report on assessing the implementation of the measures referred to in Article 25 of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography', 16 December 2016, COM (2016) 872, p. 4.

¹⁰⁷ *Ibid.*

¹⁰⁸ Recital 6, Articles 18-19.

Articles 1-4 confirm that the present legal instrument requires States to fully comply with the protective measures applied to children, especially throughout the criminal investigation and prosecution process, providing special representative for the minor, free legal counselling and representation. Interviewing the child without undue delay is another procedural guarantee for children whilst the protection of privacy, identity and image of the child should be assured during the criminal court proceedings, preventing the public dissemination of any information that could possibly result in the identification of the child.¹⁰⁹

¹⁰⁹ Article 20 (5).

3. Combatting Online Sexual Exploitation and Sexual Abuse of Children: International and European Responses

3.1 International Level

3.1.1 International Law Enforcement Agencies: The role of Interpol

Law enforcement investigations constitute the most prominent way to combat OCSEA. Interpol¹¹⁰ is one of the main international law enforcement agencies having specialized departments across borders and sectors with the aim to ensure criminals do not exploit children.¹¹¹ This task predominantly consists of five substantial limbs, namely victim identification, the international child sexual exploitation database, blocking and categorizing content, appropriate terminology and lastly by providing trainings and advice to both parents and children with the intention to keep the latter safe while in the digital environment.¹¹² With reference to the victim identification, it encompasses a thorough analysis of images and videos to pinpoint and save child sexual abuse victims. As this material represents evidence of an egregious crime involving real children and real suffering, it can be effectively detected through child exploitation investigations, proactive monitoring of online platforms as well as forensic analysis of seized digital devices such as mobile phones, laptops and digital storage units.¹¹³

In addition, the International Child Sexual Exploitation (hereinafter ICSE) Database is a specified investigative tool for use by certified law enforcement officers allowing them to examine CSAM and CSEM in the type of images, videos and hashes and therefore enabling them to compare this material with other such data previously seized and stored by other investigators.¹¹⁴ The ICSE Database maintains more than

¹¹⁰ More specifically, Interpol is the largest international police organization, with 192 member countries and it enables countries to work together to combat international crime.

¹¹¹ Interpol, 'Our Response to Crimes against Children', available at: <https://www.interpol.int/Crimes/Crimes-against-children/Our-response-to-crimes-against-children>

¹¹² Ibid.

¹¹³ Interpol, 'Victim Identification', available at: <https://www.interpol.int/Crimes/Crimes-against-children/Victim-identification>

¹¹⁴ Interpol, ECPAT International, 'Towards a Global Indicator on Unidentified Victims in Child Sexual Exploitation Material', Technical Report, 2018, p. 5, available at: <https://www.ecpat.org/wp->

2.7 million videos and images and has contributed in identifying 23.500 victims globally.¹¹⁵ Its added value is that the content therein is not rigorously illegal material but rather it is related to already known or suspected child victim of sexual exploitation or abuse and thus may lead to his/her prompt identification while stored in the database.¹¹⁶ It is though noteworthy to mention that particular forms of images and videos are prioritized and uploaded on the ICSE Database, such as those falling under the scope of Article 20 (2) of the Lanzarote Convention and the ones that could be helpful in identifying children subjected to online sexual exploitation and abuse.¹¹⁷

Against this backdrop, Interpol is similarly working towards blocking and removing CSEM and CSAM on the grounds that preventing users from accessing such webpages is a crucial part of the effective measures leading to the annihilation of the respective crimes. In this regard, police may share a list of domains or web addresses with the Internet Service Providers in an attempt to block access to Internet domains containing CSEM and CSAM.¹¹⁸ The Interpol '*Worst of*' List is available to national police through the National Center Bureaus and includes domains which distribute CSAM and have been verified by two countries at a minimum whereas it contains material meeting certain criteria, such as the ages of children depicted are under 13 years, minors are 'real' and lastly the type of abuse is considered grave.¹¹⁹ Thereby, preventing access to CSEM and CSAM is regarded as a complement to investigations arrests and undercover operations.¹²⁰ An exemplary model for such operations is the so-called '*Kids the Light of Our Lives*' Internet chatroom,¹²¹ a platform for live streaming child sexual exploitation and abuse intended to upload and share CSEM/CSAM.¹²²

[content/uploads/2018/02/Technical-Report-TOWARDS-A-GLOBAL-INDICATOR-ON-UNIDENTIFIED-VICTIMS-IN-CHILD-SEXUAL-EXPLOITATION-MATERIAL.pdf](https://www.interpol.int/content/uploads/2018/02/Technical-Report-TOWARDS-A-GLOBAL-INDICATOR-ON-UNIDENTIFIED-VICTIMS-IN-CHILD-SEXUAL-EXPLOITATION-MATERIAL.pdf)

¹¹⁵ Interpol, (n 113).

¹¹⁶ Interpol, EPCAT International (n 114).

¹¹⁷ Ibid, p. 7.

¹¹⁸ Interpol, 'Blocking and Categorizing Content', available at: <https://www.interpol.int/Crimes/Crimes-against-children/Blocking-and-categorizing-content>

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ For more information, see: Mark Townsend, 'An Unholy Alliance', The Guardian, 9 September 2007, available at: <https://www.theguardian.com/society/2007/sep/09/childrensservices>

¹²² United Nations Office on Drugs and Crimes (UNODC), 'Cybercrime, Module 12: Interpersonal Cybercrime, Key Issues: Online Child Exploitation and Abuse', The Doha Declaration: Promoting a

By the same token, the use of appropriate terminology is a cardinal element showing that OCSEA is not porn but rather a flagrant violation of children's rights, an egregious abuse and thus a crime. Hence, Interpol contributed to the development of the '*Luxembourg Guidelines*',¹²³ providing with clear guidance on how to navigate the intricate lexicon pertaining to the children's sexual exploitation and abuse.¹²⁴ On a final note, Interpol underscores that the best way to efficiently protect children is to establish an open child-oriented dialogue with respect to the proper use of the Internet, digital tools, social media and online games. Raising awareness about cyber-related risks would potentially help juveniles identify virtual threats and dangers in the online environment and therefore make them feel safe and comfortable.¹²⁵ In this context, the role of parents in reducing children's exposure seems of pivotal significance as it has been observed that experts often detect images of minors in ordinary situations while their moments of privacy should be fortified preventing sexual predators from committing such crimes.¹²⁶

3.2 European Level

3.2.1 End Online Child Sexual Exploitation and Sexual Abuse through the Initiatives of the Council of Europe

As children need special protection with regard to the digital environment, child-friendly measures are a mandatory prerequisite for the effective implementation of their right to protection and safety. In this framework, the '*CoE Strategy for the Rights of the Child*', the third children's rights strategy of the CoE, has identified five thematic

Culture of Lawfulness, available at: <https://www.unodc.org/e4j/en/cybercrime/module-12/key-issues/online-child-sexual-exploitation-and-abuse.html>

¹²³ For a detailed analysis of the commonly used definitions, see chapter 1.

¹²⁴ Interpol, 'Appropriate Terminology', available at: <https://www.interpol.int/Crimes/Crimes-against-children/Appropriate-terminology>

¹²⁵ Interpol, 'Keeping Children Safe Online', available at: <https://www.interpol.int/Crimes/Crimes-against-children/Keeping-children-safe-online>

¹²⁶ Ibid.

areas for all 47 MS of the CoE in order to fully guarantee the rights of the child, including -inter alia- '*Children's Rights in the Digital Environment*'.¹²⁷ The project is affiliated with the rights of children falling under the scope of prominent international and European human rights instruments¹²⁸ and other relevant legal standards further focusing on actions pertaining to children's dignity in the digital era and coordination among the associated sectors of the Organisation for a successful implementation of the strategy in question.¹²⁹

In light of the above, the CoE strategy should be read in conjunction with the Recommendation of the Committee of Ministers, namely the '*Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment*',¹³⁰ representing core rights that minors have in the cyberspace and can claim from governments and other respective stakeholders.¹³¹ According to the guidelines, measures to address and combat the OCSEA should espouse the best interests and the evolving capacities of children given that such crimes detrimentally effect their physical, mental and psychological well-being and development.¹³² In this regard, protection and awareness-raising measures should be adopted with the intention to protect infants from premature exposure to the online risks and thus age-verification systems are indubitably needed to ensure that minors are safe from the online sexual exploitation and abuse.¹³³ Measures concerning CSAM should have a '*victim-focused approach*' prioritizing the identification and protection of the children depicted therein as well as providing rehabilitative services where applicable. Most notably, states should persistently monitor how CSAM are hosted within their jurisdiction and require law

¹²⁷ CoE, 'Strategy for the Rights of the Child: Five Goals', Council of Europe's Strategy for the Rights of the Child in a nutshell, p. 1, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680644297>

¹²⁸ CoE, 'Strategy for the Rights of the Child (2016-2021)', 1st Implementation Report, 17 October 2017, p. 12, available at: <https://rm.coe.int/1st-report-on-the-implementation-of-the-council-of-europe-strategy-for/1680765420>

¹²⁹ Ibid.

¹³⁰ Committee of Ministers (n 3).

¹³¹ Children's Rights Digital, 'Right to Privacy and Data Protection – Learn about Your Rights in the Digital Environment', available at: <https://childrens-rights.digital/hintergrund/index.cfm/topic.275/key.1640>

¹³² Committee of Ministers (n 3), pp. 19-20.

¹³³ Ibid, p. 20.

enforcement authorities to establish a database of hashes, aiming at accelerating actions to identify children subjected to such crimes and apprehend offenders.¹³⁴

Moreover, greater emphasis given on the legal tools and pathways available constitute a decisive factor guaranteeing the effective implementation of children's rights in the digital era. Within this scope, the right to an effective remedy as substantiated in Articles 6 (Right to a Fair Trial) and 13 (Right to an Effective Remedy) of the ECHR affords the child-victim with accessible and child-friendly avenues through which children, their parents or legal representatives may submit complaints and seek remedies.¹³⁵ Such effective remedies may contain *'inquiry, explanation, reply, correction, proceedings, immediate removal of unlawful content, apology, reinstatement, reconnection and compensation'*, depending on the type of the violation.¹³⁶ On top of that, access to courts and judicial review of the administrative remedies or other legal tools available should be in agreement with the principles set forth in the *'Committee of Ministers of the CoE on child-friendly justice'*.¹³⁷ In particular, the elements of child-friendly justice are applicable for all possible actors in or outside court proceedings, regardless of the child's status.¹³⁸ Hence, children have the right to be informed in a language they understand about domestic remedies and be afforded with the relevant advice considering their level of maturity whereas states should ensure that access to remedies is swift and expedient. The guidelines which equally apply to the protection of children as victims echo the principles of the *'UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime'*¹³⁹ as well as the Lanzarote Convention both providing for the safety of children and preventing them from intimidation, retaliation and re-victimization.¹⁴⁰

On a final note, it should be underscored that within the context of the CoE Strategy for the Rights of the Child (2016-2021), the so-called *'EndOCSEA@Europe'* project is

¹³⁴ Ibid, p. 21.

¹³⁵ Ibid, p. 22.

¹³⁶ Ibid.

¹³⁷ Committee of Ministers (n 31).

¹³⁸ Ibid, p. 58.

¹³⁹ United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, 22 July 2005.

¹⁴⁰ Committee of Ministers (n 137) p. 64.

aimed at corroborating the effective implementation of the respective international and European standards arising out of the Lanzarote Convention and eight of the capabilities identified in the We Protect Model National Response.¹⁴¹ The project addresses the contextual challenges pinpointed at pan-European and national level by promoting, facilitating and endorsing state efforts and actions to prevent OCSEA. In this respect, the CoE implementing scheme includes three substantial components with the purpose of reinforcing collaboration amongst multi-sectoral as well as national and regional stakeholders. Secondly, it aims at upholding legislative and procedural reforms and training of the professionals involved in the law enforcement agencies, the judiciary and prosecutors whilst the third objective is designed to addressing societal capabilities with due weight paid to awareness-raising, education of key target groups and empowerment of children.¹⁴²

3.2.2 European Union's Actions for a More Effective Fight against Child Sexual Exploitation and Sexual Abuse

The EU Charter of Fundamental Rights¹⁴³ (hereinafter CFREU) provides -amongst others- that children have the right to such protection and care, since it is necessary for their well-being.¹⁴⁴ As the exponential development of the ICTs and its abuse has made the OCSEA a truly global crime, the fight against child sexual abuse constitutes a priority for the EU.¹⁴⁵ In fact, *the 'EU Strategy for a more effective fight against child sexual abuse'* lays down a comprehensive response to the increasing threat of the OCSEA by strengthening the prevention, investigation and assistance to children-

¹⁴¹ Council of Europe, 'End Online Child Sexual Exploitation and Abuse@Europe', available at: <https://www.coe.int/en/web/cybercrime/endocsea-europe>

¹⁴² Council of Europe, 'End Online Child Sexual Exploitation and Abuse@Europe', Project Summary, Updated: 8 July 2020, pp. 1-2, available at: <https://rm.coe.int/-vc1840-project-summary-final-jul-2020/16809ef6af>

¹⁴³ Charter of Fundamental Rights of the European Union OJ C 326, p. 391-407.

¹⁴⁴ Article 24 (1).

¹⁴⁵ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Strategy for a More Effective Fight against Child Sexual Abuse', COM(2020) 607 final, 24 July 2020, pp. 1-2, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20200724_com-2020-607-commission-communication_en.pdf

victims, including eight actions for the 2020-2025 period with the intention to implement a durable legal framework, reinforce the law enforcement response and facilitate an harmonized approach throughout the various actors involved in protecting and supporting children.¹⁴⁶

In particular, the rightful implementation of the Directive 2011/93/EU seems to be at the top of the EU strategy priorities, as it sets out minimum rules concerning the definition of the criminal offences and respective sanctions, covering both offline and online situations, requiring the active participation and coordination between governmental and non-governmental sectors and further an effective multi-disciplinary response against the global threat phenomenon.¹⁴⁷ Within this scope, the complete implementation of all the provisions of the Directive, including the areas covering the prevention measures, criminal law as well as assistance and protection to child victims is the backbone of the European Commission's responses and thus infringement procedures were launched against 23 MS in order to fully achieve the said objective.¹⁴⁸ The identification of potential legislative gaps within the Directive and the exchange of best practices¹⁴⁹ between MS towards the transposition and implementation measures are equally relevant and ensure coherence and efficiency for the full compliance within the current legislative framework.

In addition, strengthening the law enforcement efforts at both EU and national level is corroborated by the EU strategy, as a genuine progress can be made when actions are stepped up in terms of *'prevention, reporting, referral, investigation, protection and identification, treatment and follow-up of each and every case'*.¹⁵⁰ As national law enforcement agencies vary in structure when tackling OCSEA, it is crucial that MS can

¹⁴⁶ European Commission, 'Fight Against Child Sexual Abuse', available at: https://ec.europa.eu/home-affairs/what-we-do/policies/cybercrime/child-sexual-abuse_en

¹⁴⁷ European Commission, (n 145) p. 3.

¹⁴⁸ Ibid. See also: European Commission, 'October Infringement Package: Key Decisions – Child Protection: Commission calls on 13 Member States to Enforce EU Rules on Combating Child Sexual Abuse, 10 October 2019, available at: https://ec.europa.eu/commission/presscorner/detail/en/INF_19_5950

¹⁴⁹ Indeed, the European Commission has introduced a study in the context of the aforementioned best practices; for more information, see: European Commission, 'Study on Framework of Best Practices to Tackle Child Sexual Abuse Material Online', Executive Summary, 3 August 2020, available at: <file:///C:/Users/%CE%92%CE%B1%CF%83%CE%B9%CE%B1/Downloads/ExecutiveSummaryEnglish-pdf.pdf>

¹⁵⁰ European Commission, (n 145) p. 7.

count on specialized units which are sufficiently equipped and staffed with duly-trained officers in national policing system.¹⁵¹ Victim-identification teams while increasing the working capacity of the relevant national units are considered strong commitments on behalf of the MS whereas the participation of states in collaborative EU and international endeavors to *'identify children with Europol's European Cybercrime Centre (EC3) or through the International Child Sexual Exploitation (ICSE) database hosted at Interpol'*¹⁵² should be regarded as a decisive step towards a streamlined cooperation amongst all stakeholders. Besides, in order to tackle transnational cases, MS should be engaged in channeling systematically to Europol - as a central criminal information hub- while investing in respective intelligence tools or databases.¹⁵³

Against this background, the EU strategy holistically espouses a prevention approach so as to enable MS to effectively protect children subjected to online sexual exploitation and abuse. From this perspective, prevention programmes with the meaningful participation of all relevant stakeholders are unequivocally required and therefore the Commission undertook the responsibility of establishing a prevention network of reputed practitioners and researchers to support MS in implementing *'usable, rigorously evaluated and effective prevention measures to decrease the prevalence of child sexual abuse in the EU and facilitate the exchange of best practices.'*¹⁵⁴ In the same vein, the European Parliament called for a creation of a center that could build on the best practices and lessons learned from identical centers around the world, such as the National Center for Missing and Exploited Children in the United States and the Australian Center to Counter Child Exploitation.¹⁵⁵ With reference to the prevention measures, the center could hasten and facilitate coordination to assist with the most efficient use of resources invested and expertise available on prevention throughout the EU, preventing duplication of efforts. It could also be used as a hub for channeling and disseminating research and expertise in the field of OCSEA, inserting significant knowledge to policy makers

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid, p. 10.

¹⁵⁵ Ibid, pp. 12-13.

domestically and regionally in relation to the prevention gaps and possible solutions to tackle them.¹⁵⁶

By the same token, given the key role of industry in the distribution of CSEM/CSAM, it is crucial that it assumes its responsibility of protecting juveniles in its products in obedience to the EU fundamental rights, including on privacy and personal data protection. Providers of several online services are well engaged in the prevention, identification and report of the relevant CSEM/CSAM when occurring as part of their infrastructure or services.¹⁵⁷ Remarkably, the EU Internet Forum -which brings together all EU Home Affairs Ministers, the European Parliament, the Europol and representatives of large-scale Internet companies- has been seen as an exemplary model for an effective multi-sectoral collaboration in combatting OCSEA.¹⁵⁸ In addition to the above, the EU strategy explicitly provides for a successful multi-stakeholder cooperation and financial support in global and regional actions to enhance international cooperation, such as the INHOPE network of hotlines,¹⁵⁹ a global network of 47 member hotlines facilitating the removal of CSAM when anonymously reported by the public.¹⁶⁰

Taking into account the above, in response to all the emerging needs and effective implementation of the policies in question, the Academy of European Law (ERA) launched an EU project with the main objective to provide practice-oriented training on methodologies and mechanisms to fight against OCSEA.¹⁶¹ It mainly consists of six training seminars which are addressed to different groups of selected MS, guaranteeing a fair geographical assortment between EU participants and networking opportunities encouraging cooperation amongst various professions.¹⁶²

¹⁵⁶ Ibid.

¹⁵⁷ Ibid, pp. 14-15.

¹⁵⁸ Ibid, p. 15. For more information, see: European Commission, 'EU Internet Forum Ministerial: towards a coordinated response to curbing terrorist and child sexual abuse content on the internet', Migration and Home Affairs, 26 January 2021, available at: https://ec.europa.eu/home-affairs/news/eu-internet-forum-ministerial-towards-coordinated-response-curbing-terrorist-and-child-sexual_en

¹⁵⁹ INHOPE, 'Our Story: Fighting CSAM since 1999', available at: <https://www.inhope.org/EN/our-story>

¹⁶⁰ European Commission, (n 145) p. 17.

¹⁶¹ Buono, L, 'Editorial ERA Forum 3/2021: EU strategy for a More Effective Fight Against Child Sexual Abuse', ERA Forum 21: 361-364, 22 October 2020.

¹⁶² Ibid, p. 363.

Emblematically, the series of such seminars may be regarded as an added value at the EU level since the groups of experts conducting the trainings are comprised of a mixture of specialists such as judges, prosecutors, academics, governmental officials and NGO delegates sharing their practical experience in combating OCSEA. It should be stressed out that the said initiative is tailored to the needs and key challenges of the issue in question, ensuring that CSAM in MS territory is swiftly removed and adequate safeguards are provided when MS opt to take steps in blocking access to the Internet users within their territory to websites containing CSAM.¹⁶³

¹⁶³ Ibid.

4. Conclusions

The aim of the present thesis was to study the international and European legislative framework for the protection of children in cases they are subjected to online sexual exploitation and abuse along with the effective mechanisms and tools to prevent and combat the egregious violation of children's rights with the intention to ensure their safety and dignity in the digital space. The analysis was conducted by a legal standpoint with a view to critically analyze the agreed definitions of OCSEA and further explore how the international and European respective provisions protect children from online threats. In this regard, the preventive measures laid down under the relevant legislative instruments were scrutinized whereas the most prevalent actions taken at both international and regional level were adequately investigated in order to finally present how a holistic and multidisciplinary response could play a decisive role in the fight against the OCSEA.

Starting from the common definitions concerning the OCSEA, this study found that the '*Luxembourg Guidelines*' is a key guidebook which helps states and private stakeholders to conceptualize the problem of OCSEA and encourage all actors involved for immediate responses. The main purpose of analyzing the actual meaning of the different crimes, as part of the OCSEA, was to give prominence to the various terms, since it could eventually have an impact on the international and regional efforts of data collection and identification of the various modalities of the illicit actions concerned. The latter may be actually seen as a driving force to ensure more consistent and efficient advocacy, harmonized legislation and preventive policies globally.¹⁶⁴ Hence, specific acts falling under the scope of OCSEA were explained, namely online grooming / solicitation, live online child sexual abuse, child pornography, sexualized images and self-generated images of children as well as sexting. In addition, together with the latter, this thesis explained the limbs of both CSEM and CSAM with the intention to classify the material in the context of the

¹⁶⁴ Interagency Working Group in Luxembourg, (n 32) p. 1.

different terms and later elucidate the proper measures which should be taken for the removal and blocking access to such illicit contents.

Furthermore, this study delved into the international and European legislative scheme criminalizing various types of sexual encroachments against children. In particular, it examined the UNCRC, the OPSC, the Lanzarote Convention and the Directive 2011/93/EU, underscoring the most prominent provisions of both substantive and procedural criminal law along with several types of protective and preventive measures which should be taken into account by MS and the interrelated stakeholders as part of their legislative responses and policy-making. Most importantly, this thesis found that the respective provisions offer a comprehensive legislative framework, having a victim-centered approach which is anchored in promoting transnational, multidisciplinary as well as coordinated actions and therefore encouraging an array of partners and institutional actors put children at the very center of such joint efforts¹⁶⁵ making their views being heard and respected. In addition, the study confirmed that the Lanzarote Convention constitutes a comprehensive benchmark providing both criminal and procedural law standards to prevent and combat OCSEA.¹⁶⁶ They are entrenched in international relevant standards, mostly arising out of the UNCRC and the OPSC.¹⁶⁷ In addition, this thesis found that the Directive 2011/93/EU introduced several improvements in relation to the definition of child pornography, increased criminal penalties, inserted the new offence of 'grooming' together with a provision pertaining to the removing and blocking of webpages containing child pornography.¹⁶⁸ All the above enable MS to establish a harmonized and fully-fledged legislative framework, effectively identify the illicit actions taking place online against minors and thus espouse a policy for the immediate persecution of the perpetrators whilst the reporting tools available facilitate access to justice for child-victims.

Moreover, the dissertation explored the most prominent responses followed at international and European level. The role of Interpol was particularly analyzed as it consists of specific mechanisms to prevent and combat OCSEA on the grounds that its

¹⁶⁵ ECPAT International (n 2), p. 8.

¹⁶⁶ CoE (n 4), p. 26.

¹⁶⁷ Ibid.

¹⁶⁸ European Parliament (n 67), p. 13.

specialized units help identify and rescue child victims of online sexual exploitation and abuse, block access to illicit materials depicting children and hence it promotes a structured coordination amongst the various sectors involved in child protection and raising awareness about the online risks for children. Most notably, this thesis found that the ICSE Database is one of the most efficient mechanisms allowing national specialist units if CSEM and CSAM seized as part of an investigation being already known to international law enforcement agencies.¹⁶⁹

At the European level, this study emphasized on both CoE and EU responses, namely the '*EndOCSEA@Europe*' and the '*EU Strategy for a more effective fight against child sexual abuse*'. The former consists of three reinforcing components aimed at upholding multisectoral collaboration, corroborating legislative and policy responses as well as focusing on raising-awareness actions placing children at the very heart of the preventive and protective measures concerned. On the other side, the latter is viewed as an effective scheme at EU level, setting out eight comprehensive initiatives developing the right legal framework, promoting the law enforcement responses and stimulating multidisciplinary actions pertaining to the prevention, investigation and substantial assistance to victims.¹⁷⁰ The main outcome deriving from the European responses can be traced in the importance of promoting well-structured and coordinated efforts of the various public and private actors involved in the fight against OCSEA, the role of the industry to remove and block access to illicit contents online, community policing for the online safety of children as well as strengthening the use of child-friendly tools in the course of the judicial procedures affording a holistic child-centered approach during criminal proceedings.

In an attempt to provide prompt and effective responses, this study points out that states should prioritize the implementation of the respective legal frameworks while providing specialized and long-term support for child-victims, both by strengthening awareness policies and improving access to justice for the minors subjected to online sexual exploitation and abuse. Swift and effective international cooperation, strategic private sector commitment as well as sustained education focusing on the digital

¹⁶⁹ CoE (n 4), p. 30.

¹⁷⁰ European Commission (n 145), p.2.

rights of the child aimed at ensuring children's safety and dignity in the cyberspace should be essentially taken into account by the states while combatting OCSEA. In fact, the aforementioned measures are part of the '*Model National Response*' adopted by the '*We Protect Global Alliance*' with the purpose of eradicating OCSEA, reinforcing collective actions, transcending transnational boundaries.¹⁷¹

On a final note, the present study underscores that globally there is still substantial work to be done in order to ensure the effective implementation of the relevant legal regime whereas states should streamline domestic laws so as to ensure the criminalization of the various types of the offences falling under the scope of OCSEA. In addition to that, all stakeholders shall assume responsibility of abstaining from any actions that could potentially lead to the re-victimization of children since they should never be held criminally accountable. Thus, states' primary response should be the full compliance of the national legislation with the international standards while adopting the agreed definitions of the OCSEA in respect of the Luxembourg Guidelines. Further, law enforcement agencies should persistently follow holistic approaches amounting to effective investigation of the sexual-related crimes conducted against children either online or offline and be equipped with all necessary tools in order to detect '*suspicious conduct*' which might be detrimental to children.¹⁷² Lastly, all actors involved in the judicial proceedings are obliged to respect the right of the children to be heard in all matters affecting them and therefore suitable means should be adapted to the child's level of maturity whereas in line with the law, the judicial authorities should ensure the immediate enforceability of such decisions where the best interests of the child makes it imperative.¹⁷³

¹⁷¹ ECPAT International (n 2), p.8.

¹⁷² Ibid, pp. 9-12.

¹⁷³ Committee of Ministers (n 31), p.28.

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